IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

SECOND APPEAL NO. 315 OF 2005

Smt. Abupabi Gulab Momin & ors. ... Appellants

V/s

Smt. Indubai Babu Lohar & ors. ... Respondents

Mr. Prashant Kulkarni for the appellants.

CORAM: P.V. KAKADE, J.

DATED: 20TH JULY, 2005

P.C.:

1. The appellant has preferred this appeal against the judgment and order passed by the Addl. District Judge, Kolhapur, dismissing the appeal and confirming the judgment and order passed by the Civil Judge, Sr.Divn., Kolhapur dated 27.8.1997, dismissing the suit of the plaintiffs for declaration to the effect that the sale deed dated 5.5.1989 executed by deceased Gulab Momin is sham, without consideration and void document not binding on them and for a permanent injunction restraining the defendant No.1 from disposing of the suit property on the strength of the said sale deed and from recovering the rent thereof from the defendant Nos.

2 to 4 and restraining defendant Nos. 2 to 4 from paying the rent pertaining to the suit property to defendant No.1.

2. The plaintiff filed the suit for above noted cause which was stoutly challenged on behalf of the defendants.

3. The learned Trial Judge adjudicated the dispute on merits and came to the conclusion that the plaintiff had proved that the suit properties were originally owned by Yusuf Kedar Momin and that he had transferred it in the name of his son Gulab. It was further held that the plaintiff failed to prove that the suit sale deed was sham and bogus document and without consideration. It was further held that the plaintiff failed to prove that the sale deed executed by Gulab was void for the reasons recorded and, as such, he was held not entitled to the relief of injunction and was non-suited.

4. The appeal was carried to the District Court. The learned Addl. District Judge, after hearing both parties came to the conclusion that the findings recorded by the learned Trial Judge were just, legal and proper and, therefore, the appeal came to be dismissed.

Hence the present appeal.

5. I have heard the learned counsel for the appellants. Perused the record.

6. At the outset, it must be noted that there are concurrent findings recorded by both the Courts below to the effect that the plaintiffs have failed to prove that the suit sale deed was void ab-initio and, therefore, not binding upon them and, as such, the suit came to be dismissed for the said relief as well as consequent relief. Initially, it must be noted that, time and again the Apex Court has held that the second appeal cannot be decided on merely equitable grounds. Concurrent findings of facts cannot be disturbed by the High Court under Sec. 100 of the C.P.C. It is not within the domain of the High Court to investigate the grounds on which the findings were arrived at by the last Court of fact, being the first appellate Court. This is especially so, when two views are possible from the set of evidence on record, and it is found that the view taken by the lower appellate Court is just and reasonable, then it is not open to the High Court to entertain in the second appeal on the ground that another view is also possible. This aspect apart, even

on merits, on perusal of the available record, it is quite clear that it is the case of the plaintiff that deceased Gulab was hospitalized for certain period and, therefore, he was bed-ridden and was not able to execute the sale deed, however, the sale deed dated 5.5.1989 and the evidence of the medical officer in whose hospital Gulab was bed-ridden, shows that during the month of May, 1989 Gulab was not only not in the hospital but was also in sound medical condition. In view of this aspect, the allegation that Gulab was not in a position to execute the sale deed, has to be discarded. It was further submitted that the sale deed was without consideration. In that regard also, the learned lower appellate Court has recorded his finding to the effect that the sale deed has shown that the total consideration of Rs.70,000/- was received by Gulab at the foot of the suit sale deed. It is pertinent to note that the amount was not paid in lumpsum but it was paid time to time for household expenses and medical treatment. Therefore, it cannot be said that the suit was executed without any considerration. Therefore, in view of the provisions of Sec. 91 of the Evidence Act, the plaintiffs would be duty bound to lead superior evidence to rebutt the presumption which is raised by the Sub-Registrar on the document which he has not done.

Be that as it may, the fact remains that there is no substantial question of law involved in this appeal. The learned counsel for the appellants sought to put reliance on two Apex Court rulings, reported in **2003 A.I.R. SCW 5142 and A.I.R. 1968 S.C. 253.** Without further elaboration I must note that I have perused both rulings and those are not applicable to the present set of facts. Under the circumstances, the appeal has no merits and, therefore, has to be dismissed and stands dismissed.

In the result, the appeal stands dismissed with no order as to costs. Consequently, the Civil Application No. 557 of 2005 also stands dismissed.

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